

House File 2120 - Introduced

HOUSE FILE 2120
BY ABDUL-SAMAD

A BILL FOR

1 An Act relating to nuisances and providing remedies and making
2 a penalty applicable.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 657.1, subsection 1, Code 2009, is
2 amended to read as follows:

3 1. Whatever is injurious to health, indecent, or
4 unreasonably offensive to the senses, or an obstruction to
5 the free use of property, so as essentially to interfere
6 unreasonably with the comfortable enjoyment of life or
7 property, is a nuisance, and a ~~civil action by ordinary~~
8 ~~proceedings~~ petition for abatement may be brought pursuant to
9 section 657A.2A to ~~enjoin and~~ abate the nuisance and to recover
10 damages sustained on account of the nuisance.

11 Sec. 2. Section 657.2, Code 2009, is amended by adding the
12 following new subsection:

13 NEW SUBSECTION. 6A. a. Real property related to multiple
14 arrests, where the facts and circumstances that lead to each
15 arrest are wholly unrelated and occurred or partially occurred
16 on or within the real property but where the arrest itself need
17 not have actually occurred on or within the real property.

18 b. As used in this subsection:

19 (1) "*Arrest*" means an arrest related to a nuisance
20 established by local ordinance.

21 (2) "*Multiple arrests*" means any of the following:

22 (a) Two or more arrests occurring within a twelve-month
23 period related to a single-family home, multiple dwelling-unit
24 building, or a vacant structure or building.

25 (b) Two or more arrests occurring within a twelve-month
26 period related to the grounds of any real property comprising
27 a single-family home, multiple dwelling-unit building, or a
28 vacant structure or building.

29 (c) One or more arrests occurring within a twelve-month
30 period related to a single-family home, multiple dwelling-unit
31 building, or a vacant structure or building, and one or more
32 arrests occurring within a twelve-month period related to the
33 real property comprising the single-family home, multiple
34 dwelling complex of buildings, or a vacant structure or
35 building.

1 (3) "*Multiple dwelling-unit building*" means a single
2 building containing two or more housing units.

3 (4) "*Multiple dwelling complex of buildings*" means two or
4 more buildings together containing two or more housing units
5 owned or leased by the same entity.

6 Sec. 3. NEW SECTION. **657.2A Petition.**

7 1. A petition for abatement of a nuisance listed under
8 section 657.2 may be filed in the district court of the county
9 in which the property is located, by the city in which the
10 property is located, by the county if the property is located
11 outside the limits of a city, by a neighboring landowner, or
12 by a duly organized nonprofit corporation located in the city
13 or county in which the property in question is located and
14 which has community betterment as one of its corporate goals.
15 Service on the owner shall be by personal service or if service
16 cannot be made, it may be made by posting the notice in a
17 conspicuous place on the property and by publication.

18 2. If a petition filed pursuant to this chapter alleges that
19 a property is a nuisance or contains a nuisance, the city, the
20 county if the property is located outside the limits of a city,
21 a neighboring landowner, or a nonprofit corporation may apply
22 for an injunction requiring the owner of the property to abate
23 the nuisance. The court shall conduct a hearing no earlier
24 than twenty days after written notice of the application for
25 an injunction and of the date and time of the hearing is served
26 upon the owner of the property. Notice of the hearing shall be
27 served in the manner provided in subsection 1.

28 3. If the court finds at the hearing that the property is
29 a nuisance, the court shall issue an injunction requiring the
30 owner to abate the nuisance, or another order that the court
31 considers necessary or appropriate to abate the nuisance.

32 4. In a proceeding under this chapter, if the court makes
33 the finding described in subsection 3 and that the owner
34 of the property has been afforded reasonable opportunity
35 to abate the nuisance but has refused or failed to do so,

1 the court may proceed under sections 657.3 through 657.7,
 2 or as an alternative remedy the court may proceed with the
 3 receivership provisions under sections 657A.3 through 657A.10
 4 and cause notice of the findings to be served upon the owner,
 5 each mortgagee or other lienholder of record, and other known
 6 interested persons, and shall order the persons served to
 7 show cause why a receiver should not be appointed to perform
 8 work and to furnish material that reasonably may be required
 9 to abate the nuisance. For purposes of proceeding under the
 10 receivership provisions under sections 657A.3 through 657A.10,
 11 a "*nuisance*" under this section shall be considered a "*public*
 12 *nuisance*" under sections 657A.3 through 657A.10. The notice
 13 shall be served in the manner provided in subsection 1.

14 5. In a proceeding under this chapter, if the court
 15 determines the property is not a nuisance the court shall
 16 dismiss the petition and may require the petitioner to pay the
 17 owner's reasonable attorney fees actually incurred.

18 Sec. 4. Section 657A.1, subsection 7, Code 2009, is amended
 19 to read as follows:

20 7. "*Public nuisance*" means a building that is a menace to
 21 the public health, welfare, or safety, or that is structurally
 22 unsafe, unsanitary, or not provided with adequate safe egress,
 23 or that constitutes a fire hazard, or is otherwise dangerous to
 24 human life, or that in relation to the existing use constitutes
 25 a hazard to the public health, welfare, or safety by reason
 26 of inadequate maintenance, dilapidation, obsolescence, or
 27 abandonment. "Public nuisance" also means a nuisance under
 28 section 657.2.

29 EXPLANATION

30 This bill specifies a legal process to abate certain
 31 nuisances.

32 The bill creates a nuisance for multiple arrests that occur
 33 on the same property.

34 The bill defines "arrest" to mean an arrest related to a
 35 nuisance established by a local ordinance.

1 The bill defines "multiple arrests" within a twelve-month
2 period to include the following: two or more arrests related
3 to a single-family home, multiple dwelling-unit building, or a
4 vacant structure or building; two or more arrests related to
5 the real property comprising a single-family home, multiple
6 dwelling-unit building, or a vacant structure or building; or
7 one or more arrests related to a single-family home, multiple
8 dwelling-unit building, or a vacant structure or building,
9 and one or more arrests on the real property comprising a
10 single-family home, multiple dwelling complex of buildings, or
11 a vacant structure or building.

12 The bill also defines a "multiple dwelling-unit building" to
13 mean a single building containing two or more housing units.

14 The bill defines a "multiple dwelling complex of buildings"
15 to mean two or more buildings together containing two or more
16 housing units owned or leased by the same entity.

17 In order for real property to be established as a nuisance,
18 the facts and circumstances that lead to an arrest must
19 occur or partially occur on the real property subject to
20 the provisions of the bill but it is not necessary for the
21 arrest to actually occur on such property. The facts and
22 circumstances for each arrest must also be wholly unrelated.

23 The bill establishes a legal process to abate a nuisance for
24 all nuisances listed in Code section 657.2 including nuisances
25 related to multiple arrests on a property. Under the bill,
26 a petition for abatement of a nuisance may be filed by a
27 city, county, a neighboring landowner, or by a duly organized
28 nonprofit corporation located in the city or county where the
29 property containing the nuisance is located and which has
30 community betterment as one of its goals.

31 Under the bill, if the petition for abatement contains
32 an application for an injunction requiring the owner of the
33 property to abate the nuisance, the court shall conduct a
34 hearing on the application for an injunction no earlier than 20
35 days after notice of the application is served upon the owner

1 of the property.

2 If the court finds the property is a nuisance, the bill
3 requires the court to issue an injunction requiring the owner
4 to abate the nuisance, or allows the court to consider other
5 orders necessary to abate the nuisance.

6 Under the bill, if the court finds a property is a nuisance
7 and the owner of the property has had a reasonable time to
8 abate the nuisance but has failed to abate the nuisance, two
9 remedies are available to the court.

10 First, the court may proceed with the remedies available
11 to the court that exist in Code sections 657.3 through 657.7,
12 including prosecuting the owner for committing an aggravated
13 misdemeanor.

14 Second, as an alternative remedy, the court may proceed
15 under the receivership provisions in Code sections 657A.3
16 through 657A.10. Under the receivership provisions, the
17 court shall notify all interested parties in the property and
18 order the parties to show cause why a receiver should not be
19 appointed to perform the work or provide the materials to abate
20 the nuisance. If a receiver is appointed, the receiver may
21 take possession and control of the property, incur costs to
22 abate the nuisance, and be reimbursed for the costs to abate
23 the nuisance.

24 If the court determines the property is not a nuisance under
25 the bill, the petitioner may be required to pay the attorney
26 fees incurred by the owner defending the property.